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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

15 UNITED STATES OF AMERICA,) 3:12-cr-00141-HDM-VPC
16 Plaintiff,)
17 vs.) ORDER
18 ISIDORO GUEVARA-GARCIA,)
19 Defendant.)

Defendant Isidoro Guevara-Garcia ("defendant") is charged in two separate but related indictments. The first indictment, against defendant and three co-defendants - Uvaldo Tostado, Alvaro Meraz, and Juan Manuel Valenzuela, Jr. - charges defendant with: (1) conspiracy to possess with intent to distribute cocaine; (2) illegal use of a communication facility; and (3) forfeiture of \$3,500. The second indictment charges possession of a firearm by an unlawful alien. On July 3, 2013, defendant filed a motion to

1 suppress (#115), adopting in full the arguments made by Tostado in
2 a motion to suppress he filed on May 15, 2013 (#78, #94). The
3 government has filed its response (#120), adopting the arguments it
4 made in opposition to Tostado's motion (#92).

5 In August 2012, the DEA learned from a source of information
6 that Tostado was a cocaine and methamphetamine dealer in Reno and
7 Incline Village, Nevada. On September 17, 2012, and September 26,
8 2012, a confidential source ("CS") purchased one-ounce quantities
9 of cocaine from Tostado. On October 9, 2012, and October 16, 2012,
10 the government applied for and obtained pen registers/trap and
11 trace and GPS data location information for Tostado's cell phone.
12 On October 30, 2012, the CS purchased three ounces of
13 methamphetamine from Tostado and Manuel Andres Valenzuela. On
14 November 26, 2012, the DEA applied for a wiretap of Tostado's cell
15 phone, which was granted on November 28, 2012. On December 14,
16 2012, Tostado was arrested in Modesto, California, along with Meraz
17 and seven ounces of powder cocaine.

18 On January 2, 2013, defendant was added to the cocaine
19 indictment and a warrant was issued for his arrest. Defendant was
20 arrested on January 3, 2013, outside of his home. During a search
21 of defendant's home, agents located two firearms.

22 Defendant moves to suppress evidence obtained as a result of
23 the wiretap of Tostado's phone. Specifically, the wiretap allowed
24 the government to intercept four phone calls between defendant and
25 Tostado discussing delivery of drugs by Tostado to defendant.
26 Defendant argues this is the only evidence the government has
27 against him for the cocaine indictment. Further, defendant was
28 added to the cocaine indictment and arrested as a result of this

1 evidence; thus, the two firearms found in defendant's possession
2 were found only because of the wiretap, as well. Accordingly, if
3 the motion to suppress is granted, the government's case against
4 defendant in both indictments would be effectively precluded.

5 **I. Standing**

6 As an initial matter, defendant has standing to challenge the
7 wiretap, which the government has essentially conceded. (See Doc.
8 #110). Under 18 U.S.C. § 2518(1)(a), "[a]ny aggrieved person in
9 any trial before any court . . . of the United States . . . may
10 move to suppress the contents of any wire or oral communication
11 intercepted pursuant to this chapter, or evidence derived
12 therefrom, on the grounds that . . . the order of authorization or
13 approval under which it was intercepted is insufficient on its
14 face." "'[A]ggrieved person' means a person who was a party to any
15 intercepted wire, oral, or electronic communication or a person
16 against whom the interception was directed." *Id.* § 2510(11).
17 Defendant was a party to a number of the communications intercepted
18 as a result of the wiretap. He has standing.

19 **II. Motion to Suppress**

20 Under 18 U.S.C. § 2518, a wiretap application must include "a
21 full and complete statement as to whether or not other
22 investigative procedures have been tried and failed or why they
23 reasonably appear to be unlikely to succeed if tried or to be too
24 dangerous." 18 U.S.C. § 2518(1)(c). A wiretap is properly issued
25 only where "normal investigative procedures have been tried and
26 have failed or reasonably appear to be unlikely to succeed if tried
27 or to be too dangerous." 18 U.S.C. § 2518(3)(c). Thus, to obtain
28 a wiretap, the government must prove necessity. *United States v.*

1 *Blackmon*, 273 F.3d 1204, 1207 (9th Cir. 2001).

2 Defendant argues that the affidavit failed to establish the
3 requisite necessity; he does not argue that the affidavit failed to
4 comply with § 2518 in any other respect. Specifically, defendant
5 adopts Tostado's argument that the application did not show
6 traditional investigative methods were insufficient because they
7 had already caught Tostado in the act, and that the goals of the
8 investigation were overly broad and possibly pretextual - the real
9 purpose being attribution of more drugs to - and addition of more
10 charges against - Tostado, as evidenced by the termination of the
11 wiretap before achieving any of those goals. The government
12 responds that the application sufficiently set forth in case-
13 specific detail sixteen investigative techniques that were either
14 used or determined not likely to be successful, that no traditional
15 techniques would have been able to achieve to broader goals of the
16 investigation, and that its goals were proper. In particular, the
17 government points out that rather than not being necessary as to
18 defendant, the wiretap was critical to bring its case against
19 defendant; without the wiretap, the government had "limited
20 evidence" of defendant's involvement. The government further
21 argues that the ultimate result of the wiretap has no relevance as
22 to whether the original purpose of the investigation was
23 legitimate.

24 In reviewing a wiretap application, the Ninth Circuit first
25 considers *de novo* whether the application is "supported by a full
26 and complete statement of the facts in compliance with 18 U.S.C. §
27 2518(1)(c)," and next reviews "for abuse of discretion the issuing
28 judge's conclusion that the wiretap was necessary." *United States*

1 v. *Rivera*, 527 F.3d 891, 898 (9th Cir. 2008).¹

2 **A. Full and Complete Statement**

3 Under 18 U.S.C. § 2518, a wiretap application must include "a
 4 full and complete statement as to whether or not other
 5 investigative procedures have been tried and failed or why they
 6 reasonably appear to be unlikely to succeed if tried or to be too
 7 dangerous." 18 U.S.C. § 2518(1)(c). An application that "contains
 8 only generalized statements that would be true of any narcotics
 9 investigation" and "boilerplate conclusions that merely describe
 10 inherent limitations of normal investigative procedures" is
 11 insufficient. *Blackmon*, 273 F.3d at 1208, 1210. An affidavit must
 12 do more than simply recite the inherent limitations of
 13 investigative techniques; it must explain in case-specific detail
 14 why they would not work in that particular investigation. See
 15 *Rivera*, 527 F.3d at 899. However, "[t]he presence of [some]
 16 conclusory language in the affidavit will not negate a finding of
 17 necessity if the affidavit, as a whole, alleges sufficient facts
 18 showing necessity." *United States v. Garcia-Villalba*, 585 F.3d
 19 1223, 1230 (9th Cir. 2009) (quoting *United States v. Torres*, 908
 20 F.2d 1417, 1423 (9th Cir. 1990)).²

21

22 ¹ "Whether other investigative procedures have been exhausted or why
 23 they reasonably appear to be unlikely to succeed if attempted, is reviewed
 24 *de novo* A district court's denial of a motion to suppress evidence
 25 is reviewed *de novo* and underlying factual issues are reviewed for clear
 26 error." *United States v. Lynch*, 437 F.3d 902, 912 (9th Cir. 2006).

27

28 ² A court considering a motion to suppress wiretap evidence must also
 29 examine the application "to see whether it contains material misstatements
 30 or omissions regarding necessity." *Blackmon*, 273 F.3d at 1207. "If an
 31 application contains inaccuracies or significant omissions, the court must
 32 determine the facts relying on credible evidence produced at the suppression
 33 hearing to determine whether a 'reasonable [issuing] judge could have denied
 34 the application because necessity for the wiretap had not been shown.'" *Id.*
 35 at 1208. "To obtain a *Franks* hearing, defendants must make a preliminary

1 The affidavit submitted in support of the wiretap application
2 discusses 16 investigative techniques that the government used or
3 determined were not likely to succeed based on the specific facts
4 of this case: (1) confidential sources (used); (2) controlled
5 purchases (used); (3) undercover operations (not likely to
6 succeed); (4) physical surveillance (used); (5) search warrants
7 (not likely to succeed); (6) witness interviews (used); (7) grand
8 jury subpoenas (not likely to succeed); (8) pole cameras (used);
9 (9) tracking devices (not likely to succeed); (10) GPS location
10 data of defendant's phone (used); (11) toll analysis, pen
11 registers, and trap and trace devices (used); (12) covert recording
12 devices (used); (13) trash searches (not likely to succeed); (14)
13 financial investigations - public records checks (used); (15) mail
14 cover (not likely to succeed); and (16) ongoing investigations of
15 suspected co-conspirators (used). (Gettel Aff. 27-43). Defendant
16 does not identify any methods that should have been discussed but
17 were not. The affidavit discussed a sufficient number of
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19 showing that the wiretap applications contained material misrepresentations
20 or omissions." *United States v. Gonzalez, Inc.*, 412 F.3d 1102, 1110 (9th
Cir. 2005), amended on other grounds by *United States v. Gonzalez, Inc.*, 437
F.3d 854 (9th Cir. 2006).

21 The defendant has made no explicit claim of material misrepresentations
22 or omissions, nor did he request a *Franks* hearing. However, Tostado had
23 asserted that the affidavit's conclusion that the CS could not penetrate the
24 drug-trafficking organization ("DTO") at higher levels is belied by DEA
25 investigative reports in discovery showing the CS was in regular
26 communication with Tostado and regularly arranging meetings. To the extent
27 this was to suggest misrepresentations in the affidavit, neither defendant
28 has made any preliminary showing justifying a *Franks* hearing. There is only
the conclusory assertion and no evidence - not even the supposed DEA
investigative reports showing the interactions between the CS and Tostado.
Further, if even this conclusory assertion were evidence, the mere fact the
CS and Tostado communicated and arranged meetings does not show that the CS
was in a position to penetrate the DTO. To the extent defendant attempts
to raise a *Franks* issue, he has not made any preliminary showing that the
wiretap application contained material misrepresentations or omissions.

1 traditional investigative techniques in explaining why none of them
2 could meet the goals of the investigation.

3 While the number of techniques discussed is adequate, the
4 affidavit must also contain sufficient case-specific information
5 explaining why those techniques are of limited use in this case.
6 Defendant targets as insufficient the affidavit's discussion of:
7 (1) sources of information (Def. Mot. 7:4-7); (2) confidential
8 informants (Def. Mot. 7:4-7); (3) controlled purchases (Def. Mot.
9 7:4-7); (4) physical surveillance (Def. Mot. 7:4-7); (5) pen
10 register/trap and trace/GPS data location (Def. Mot. 7:4-7); (6)
11 undercover agents (Def. Mot. 10:10-11); and (7) grand jury
12 subpoenas and search warrants (Def. Mot. 11:20-21).

13 As to confidential sources and sources of information,
14 defendant relies on *Blackmon*. In *Blackmon*, the affidavit explained
15 "that despite the successful employment of four informants during
16 the . . . pre-wiretap investigation, these informants are
17 insufficient to meet the broad investigative purpose here because
18 they 'typically only possess limited knowledge concerning the scope
19 of the criminal enterprise'" and that subjects like the defendant
20 "'know that it is their best interest to reveal as little as
21 possible to others concerning how their business is conducted . . .
22 Therefore, without the evidence sought by the application,
23 cooperating source information is insufficient to identify the
24 entire criminal enterprise." *Blackmon*, 273 F.3d at 1210. The
25 court held that "[t]hese statements would be true of most or all
26 drug conspiracy investigations, and the limitations on the
27 usefulness of informants, no matter how successful or potentially
28 successful to the particular operation, would support the necessity

1 of a wiretap." *Id.*

2 Here, the affidavit explained that while the source of
3 information had been able to provide information about the drug
4 trafficking organization ("DTO"), he or she was not in a position
5 to interact with Tostado or his associates because the SOI was not
6 a drug user or trafficker. As to the CS, the affidavit explained
7 that while he or she had been able to purchase drugs from Tostado,
8 he or she had limited dialogue with Tostado and Tostado revealed
9 limited facts to the CS. The CS had not obtained any information
10 about the sources of supply or drug stash locations, and given the
11 interactions between the CS and Tostado, it seemed he or she never
12 would. While the statement offered some generic descriptions of
13 the inherent limitations of confidential sources and sources of
14 information, that was not all it offered. The conclusion as to the
15 limits of the CS in this case were based on the facts of this case:
16 the CS's historic interactions with Tostado. The description of
17 the limitations of using a CS in this case therefore contained
18 sufficient case-specific detail.

19 As to controlled purchases, the affidavit explained that while
20 they had been used they had not revealed any information relevant
21 to the other investigative purposes, including the sources of
22 supply and other higher-level members of the DTO. Again, while
23 there is some discussion of the generic limitations of this method,
24 the affidavit explains specifically what information the controlled
25 purchases had uncovered and what information they had not and would
26 likely not, based on the facts of this case.

27 As to undercover operations, the affidavit states that such
28 are unlikely to succeed based on the agent's knowledge of Mexican-

1 based DTOs operating in the Reno area. While somewhat general in
2 nature, the affidavit still contains specific information about
3 why, in this case, undercover officers could not infiltrate the DTO
4 at a sufficiently high level to net higher level operators of the
5 DTO: because the Reno area is a small community and because, based
6 on the CS's experience with Tostado, any interactions with
7 outsiders would likely remain at a relatively low level.

8 As to physical surveillance, the affidavit explained that
9 based on surveillance already conducted in the case the targets
10 appeared on alert to law enforcement presence. For that reason the
11 agent did not believe surveillance could lead to the broader
12 targets of the investigation. While much of it is conclusory, the
13 statement explains each instance of physical surveillance and the
14 information gleaned from it to show its limitations.

15 As to pen register/trap and trace/GPS data location, some of
16 the statement is broadly applicable to all drug transactions and/or
17 is a description of the inherent difficulties of the methods.
18 However, the affidavit also specified why pen register/trap and
19 trace was not effective in this case: the subscriber information
20 and physical address for the phone believed to be used by Tostado
21 were not accurate, so it was impossible to identify with certainty
22 that the participants in the calls were the individuals listed as
23 subscribers. And the affidavit explained that GPS location data
24 was of limited usefulness in this case because such data gives only
25 a general vicinity of a subject, and Tostado resided in an area
26 with limited cellular tower resources (Incline Village),
27 compounding the margin of error.

28 Finally, as to grand jury subpoenas and search warrants, the

1 defendant cites *United States v. Gonzalez, Inc.*, 412 F.3d 1102,
2 1114 (9th Cir. 2005), amended on other grounds by *United States v.*
3 *Gonzalez, Inc.*, 437 F.3d 854 (9th Cir. 2006), which found
4 insufficient the affidavit's rejection of such on the basis that
5 "they would likely reveal the investigation to its targets." The
6 court went on to say: "Such statements do not reasonably explain
7 why traditional investigative tools are unlikely to succeed in a
8 particular investigation, but are 'boilerplate conclusions that
9 merely describe inherent limitations of normal investigative
10 procedures,' which we have found insufficient to establish
11 necessity." While the affidavit's discussion of grand jury
12 subpoenas and search warrants here is mostly general and provides
13 only minimal specifics, this is not dispositive if on the whole the
14 affidavit contains enough facts demonstrating necessity. On the
15 whole, the affidavit here contained sufficient facts for the
16 issuing court to determine a wiretap's necessity.

17 The affidavit contained a full and complete statement in
18 accordance with § 2518(1)(C). While some of its justifications
19 were conclusory and broadly generic, as a whole there was
20 sufficient case-specific information for the issuing court to
21 determine the wiretap was necessary.

22 **B. Necessity**

23 The purpose of the necessity requirement "is to ensure that
24 wiretapping is not resorted to in situations where traditional
25 investigative techniques would suffice to expose the crime."
26 *Blackmon*, 273 F.3d at 1207. "A district court must reject a
27 wiretap application if law enforcement officers have not first
28 attempted, without success, traditional investigative methods that

1 'easily suggest themselves and are potentially productive and not
 2 unduly dangerous.'" *United States v. Carneiro*, 861 F.2d 1171, 1176
 3 (9th Cir. 1988). However, the government is not required to
 4 "exhaust every possible technique before resorting to wiretapping,"
 5 *Gonzalez, Inc.*, 412 F.3d at 1113, and "[t]he necessity requirement
 6 can be satisfied by a showing in the application that ordinary
 7 investigative procedures, employed in good faith, would likely be
 8 ineffective in the particular case." *Garcia-Villalba*, 585 F.3d at
 9 1228. The court employs a "common sense approach" to determine the
 10 reasonableness of the government's good faith efforts to use
 11 traditional investigative techniques or the decision to forgo such
 12 based on unlikelihood of success of risk of danger. *Gonzalez,*
 13 *Inc.*, 412 F.3d at 1112.

14 Where the government is investigating a conspiracy, it is
 15 "entitled to more leeway in its investigative methods." *United*
16 States v. McGuire, 307 F.3d 1192, 1198 (9th Cir. 2002). The Ninth
 17 Circuit has "'consistently upheld findings of necessity where
 18 traditional investigative techniques lead only to apprehension and
 19 prosecution of the main conspirators, but not to apprehension and
 20 prosecution of ... other satellite conspirators.'" *Rivera*, 527
 21 F.3d at 902.

22 "The necessity for the wiretap is evaluated in light of the
 23 government's need not merely to collect some evidence, but to
 24 develop an effective case against those involved in the
 25 conspiracy." *United States v. Decoud*, 456 F.3d 996, 1007 (9th Cir.
 26 2006). An effective case means evidence of guilt beyond a
 27 reasonable doubt and not merely evidence sufficient to secure an
 28 indictment. *Garcia-Villalba*, 585 F.3d at 1228.

1 In his motion, the defendant relies heavily on *Gonzalez, Inc.*,
2 412 F.3d 1102. In *Gonzalez, Inc.*, the Ninth Circuit affirmed the
3 district court's determination that in an investigation of an alien
4 smuggling operation, the application for a wiretap of the
5 smuggler's office building had failed to establish the requisite
6 necessity. Before seeking a wiretap, the government had conducted
7 only the following investigations: (1) five days' worth of pen
8 register analysis; (2) five days' worth of trap and trace analysis;
9 and (3) limited physical surveillance of the office. The court
10 held this "limited use of traditional methods does not establish
11 that normal tools were sufficiently exhausted before the government
12 requested a wiretap." *Id.* at 1112. The court further held that
13 even if the government had not used "an ample array of traditional
14 investigative tools" before seeking the wiretap, it "would have
15 proven necessity had it reasonably attested that the unused tools
16 were unlikely to succeed." *Id.* at 1114.

17 *Gonzalez, Inc.* is unpersuasive. Before seeking a wiretap, the
18 government in this case did much more, including: (1) using a CS to
19 conduct two controlled purchases; (2) physical surveillance of the
20 target subjects during the controlled purchases and one day of
21 surveillance of defendant's home; (3) interviews of CSs and sources
22 of information; (4) mounting a pole camera at Tostado's residence;
23 (5) GPS location data on Tostado's phone; (6) telephone toll
24 records and pen register/trap and trace on Tostado's phone; (7)
25 covert recording devices during the controlled purchases; and (8)
26 public records checks for property, as well as Suspicious Activity
27 Reports (SAR) and Currency Transaction Reports (CTR) checks.
28 Moreover, the investigation was conducted for at least three months

1 before seeking the wiretap. The Ninth Circuit in *Gonzalez, Inc.*
2 found the wiretap unnecessary in part because the government had
3 not conducted a sufficient investigation before seeking it.
4 *Gonzalez, Inc.* is thus easily distinguished from this case.

5 The defendant also argues that *Gonzalez, Inc.* stands for the
6 proposition that use of confidential informants should not be
7 rejected as an investigative method where they were successfully
8 used earlier in the investigation. However, in *Gonzalez, Inc.* the
9 government had used CIs earlier in the investigation with respect
10 to a separate building but had not used any CIs with respect to the
11 building that was subject of the contested wiretap. What the Ninth
12 Circuit actually held was that because CIs had been used to
13 successfully infiltrate the other building, the government should
14 have attempted to use CIs before seeking a wiretap for the subject
15 building. That is not the case here, where a CS was in fact used
16 to gather information on the defendants' criminal activities.
17 Further, the Ninth Circuit has held that "[a]ny previous success
18 from the use of confidential informants is even less persuasive in
19 the context of an investigation of a criminal conspiracy" and has
20 "acknowledged the limitations of individual informants in such
21 broad investigations and often upheld government requests for such
22 wiretaps when large-scale investigations are under investigation."
23 *United States v. Canales Gomez*, 358 F.3d 1221, 1225-26 (9th Cir.
24 2004). In that case, the court went on to state:

25 Here, the government is to be commended for its interest
26 in wiretap evidence, which, compared to the word of an
informant either in the field or in court, is the gold
standard when it comes to trustworthy evidence. The
27 truth-seeking function of our courts is greatly enhanced
when the evidence used is not tainted by its immediate
28 informant source and has been cleansed of the baggage

1 that always comes with them. Moreover, wiretap evidence
2 out of the mouths of defendants is valuable corroboration
3 of informant testimony. Such evidence serves also to
4 ensure that what investigators are being told by
informants is accurate, a very valuable function that
guards against the indictment of the innocent.

5 *Id.* at 1227.

6 The defendant further argues that the CS could have continued
7 to infiltrate the DTO as evidenced by the fact Tostado introduced
8 him or her to another co-defendant. However, as noted earlier, the
9 Ninth Circuit has "consistently upheld findings of necessity where
10 traditional investigative techniques lead only to apprehension and
11 prosecution of the main conspirators, but not to apprehension and
12 prosecution of ... other satellite conspirators." *Rivera*, 527
13 F.3d at 902. The fact the CS met one other conspirator does not
14 prove that he would be able to assist the government in locating
15 other conspirators - or in locating the sources of supply, drug
16 stash locations, or other things sought by the investigation. The
17 CS was not a part of Tostado's organization, and any argument that
18 he may have penetrated it is purely speculative. See *United States*
19 *v. Aviles*, 170 F.3d 863, 867 (9th Cir. 1998) (cited and discussed
in government's brief).

20 Defendant also argues that the CS was in constant
21 communication with Tostado and so could have acquired information
22 relevant to the broader goals of the investigation. However, as
23 already noted, there is no indication that Tostado was sharing with
24 the CS any useful information - or that he ever would. Relatedly,
25 the defendant adopts Tostado's argument that because traditional
26 investigative methods had been successful in the investigation,
27 there was no need to resort to a wiretap. The defendant's argument
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1 not only ignores the broader goals of the investigation, which the
2 affidavit clearly shows were not being achieved by traditional
3 methods, but also ignores his argument that the government would
4 have had no evidence against him but for the wiretap.

5 Defendant also apparently adopts Tostado's argument that a
6 wiretap was not necessary because physical surveillance would have
7 led the government to Modesto, where Tostado was arrested with
8 seven ounces of cocaine. Clearly this argument is inapplicable to
9 defendant, because there has been no showing that surveillance
10 would have led authorities to him.

11 Defendant also argues that many cases in which wiretaps were
12 approved involved investigations of much larger drug trafficking
13 organizations, citing *Rivera* and *United States v. Armenta*, 373 Fed.
14 App'x 685, 689 (9th Cir. 2010). The government argues that it does
15 not have to be investigating a massive conspiracy in order to
16 obtain a wiretap. While it is true that most of the cases cited
17 involved large DTOs and the large scale of the DTOs was
18 acknowledged as a factor in favor of finding necessity, defendant
19 has cited no case in which the size of the conspiracy was a reason
20 for disapproving a wiretap. Nor, indeed, has the conspiracy in
21 this case been proven to be smaller than those at issue in *Rivera*
22 and *Armenta*. Even though only five people were netted as a result
23 of the investigation, it remains clear that at least some and
24 perhaps several more within the conspiracy remain at large.

25 Defendant also argues that the investigation lasted only two
26 to three months (the evidence indicates the time period was
27 approximately three to four months) before the government sought a
28 wiretap, and that two to three months is not enough time to

1 establish that traditional investigative techniques were
2 insufficient. The defendant argues that of all the cases cited by
3 the parties, only two involved investigations that lasted less than
4 six months and in both the wiretaps were disapproved. The
5 government correctly argues that the case law does not set forth
6 any minimum amount of time an investigation must last before a
7 wiretap may be sought. While the length of time does seem to be a
8 relevant factor to consider in determining whether traditional
9 investigative techniques had failed, the essential question
10 remains, however, whether traditional investigative methods had
11 proven unhelpful in attaining the investigation's goals. Here, the
12 affidavit was sufficient to support the wiretap and the issuing
13 judge did not abuse his discretion in finding that a wiretap was
14 necessary.

15 Defendant relies on *Blackmon*, 273 F.3d at 1211, and argues
16 that to the extent the investigative techniques could not achieve
17 the investigation's goals, those goals were overly broad. *Blackmon*
18 is distinguishable. The affidavit in *Blackmon* provided only
19 conclusory and generic justifications for the rejection of
20 traditional investigative techniques. The affidavit here provides
21 case-specific detail. Further, goals similar to those sought in
22 this case have been upheld in other DTO investigations. See
23 *Rivera*, 527 F.3d at 896-97 (wiretap application sought information
24 about the full scope of DTO, the identities of those involved,
25 including transporters and suppliers, and a money laundering
26 operation); *Canales Gomez*, 358 F.3d at 1224 (application "sought to
27 reveal the key personnel of the narcotic trafficking conspiracy,
28 the identity of the main customers of the identified conspiracy,

1 the stash locations where cocaine was stored prior to distribution,
2 and the management and disposition of financial proceeds generated
3 by the organization's cocaine trafficking").

4 Finally, defendant adopts Tostado's argument suggesting the
5 broad goals espoused in the application were pretextual because the
6 government never pursued them, and that the government was really
7 only after Tostado. Defendant cites nothing to suggest that
8 inadequate results of a wiretap may be used to show that the
9 wiretap was not properly authorized in the first place. Further,
10 the government's intentions with respect to Tostado are irrelevant
11 as to defendant.

12 The court concludes that the issuing judge did not abuse his
13 discretion in finding the wiretap necessary. The government
14 engaged in a wide array of investigative techniques before seeking
15 the wiretap, methods that did not provide the government a way to
16 progress beyond low level purchases from Tostado - and in
17 particular obtained only limited evidence against defendant before
18 the wiretap. While the government did not pursue all
19 investigative methods, it is not required to. Further, the
20 government is entitled to more leeway in its investigation of a
21 conspiracy. Finally, the fact the government ultimately was unable
22 to achieve the goals of its investigation does not prove those
23 original goals were illegitimate or that the wiretap was
24 unnecessary.

25 **Conclusion**

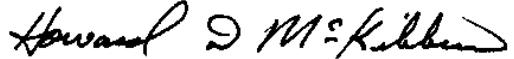
26 In accordance with the foregoing, the court concludes that the
27 affidavit contained a full and complete statement and sufficiently
28 established the necessity of a wiretap and that the court's

1 issuance of the Title III wiretap was not an abuse of discretion.

2 The defendant's motion to suppress (#115) is therefore denied.

3 IT IS SO ORDERED.

4 DATED: This 25th day of July, 2013.

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6 UNITED STATES DISTRICT JUDGE
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